

## **811 KAR 2:105. Hearings, reviews and appeals.**

RELATES TO: KRS 230.610-230.770

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which Arabian, quarter horse and appaloosa racing shall be conducted in Kentucky. The function of this administrative regulation outlines the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. Hearings, Reviews, Appeals. (1) Before holding any stewards' hearing provided for under these rules, notice in writing must be given to any party charged with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) The notice required by Section 2(1) of this administrative regulation shall:

(a) Notify the party of the specific rule or rules, the infraction for which he is charged, and a brief statement of the facts supporting said charge.

(b) State the time and place of hearing.

(c) State that the party charged may be represented by legal counsel, or by a representative of any racing trade organization of which he is a member.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony of such hearings shall be given under oath, and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards will not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of said hearing the stewards shall find that a rule has been violated, they shall promptly issue a written ruling which sets forth the full name of every person charged with the rule violation, identification of such persons, if licensed by license classification and address, the rule number and pertinent parts of the rule violated, the finding by the stewards as to the violation of such rule, and the penalty affixed by the stewards. Copies of such rulings shall be delivered to each party in interest, delivered to the commission, posted in the racing secretary's office, and forwarded to the office of the National Association of State Racing Commissioners.

(7) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(8) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the commission for a review of such stewards' order or ruling other than as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(9) Application for review. An application to the commission for review of a steward's order or ruling must be made within ten (10) days after such order or ruling is issued in writing, and shall:

(a) Be in writing and addressed to the commission secretary at the commission general office.

(b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant.

(c) Set forth the order or ruling requested to be reviewed and the date thereof.

(d) Set forth the reasons for making such applications.

(e) Request a hearing.

Section 2. Commission Hearings. Before holding any commission hearing provided for under these rules, the commission shall:

(1) Give written notice forthwith to all parties personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable number thereof as representatives of such class. Such notice shall include a statement of:

(a) Time and place of such hearing as designated by the commission chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular rules or statutes alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the act or rules promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the commission, employing such rights of discovery and use of subpoenas as would be available under the Kentucky Rules of Civil Procedure, pretrial and trial procedures shall be governed by Kentucky Rules of Civil Procedure.

Section 3. Special Prosecutor. (1) The commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a rule violation if the matter involved a rule violation and requires a proceeding of an adversary nature; such prosecutor being one who has had no prior participation in the matter of any kind. The commission also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the commission to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The commission shall permit all parties that so desire to be represented by counsel; shall permit all parties to respond and present evidence and argument on all issues involved; and shall permit all parties to examine commission memoranda and data and all other information which is or has been considered by the commission in investigating and hearing the matter or which may be offered as evidence.

(3) The commission shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. When a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obedience; failure to comply with such order shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the commission, the order of proof in the de novo hearing may be:

(a) Evidence presented by the prosecution as to alleged violations of a rule;

(b) Cross examination of prosecution witnesses; redirect examination;

(c) Evidence presented by a party charged, in defense or explanation;

(d) Cross examination of party charged, and his witnesses; redirect examination;

(e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;

(f) Closing argument by party charged; and

(g) Closing argument by prosecution.

(5) The commission shall keep a record of each hearing which shall include:

(a) All pretrial and trial pleadings, motions, and interlocutory rulings;

(b) All evidence received or considered;

- (c) A statement of matters officially noticed;
  - (d) Questions and offers of proof and rulings thereon;
  - (e) Proposed findings and exceptions;
  - (f) All commission memoranda or data submitted to the commission in connection with the commission's consideration of the case;
  - (g) All stenographic recordings taken and transcriptions made; oral proceedings, or any part thereof, shall be reported stenographically upon request of any party and shall be paid for by such parties desiring copies; and
  - (h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the commission on the matter.
- (6) The commission may exclude evidence that is irrelevant, immaterial, or unduly repetitious and may admit evidence that would be inadmissible under the Rules of Civil Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.
- (a) Objections to evidentiary offers may be made and shall be noted in the record; and
  - (b) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.
- (7) The commission may take official notice of technical facts or customs or procedures common to racing, but all appearing parties to the hearing shall be duly notified. Appearing parties shall have an opportunity to contest facts so noticed, including commission memoranda or commission data.
- (8) Members of the commission participating in the adjudication of a matter before it shall not, directly or indirectly:
- (a) In connection with any issue of fact in the matter before the commission, consult with any person or party who was engaged in the investigation or prosecution of the matter before the commission, or conduct any personal investigation outside the record, without giving an opportunity for all appearing parties to participate.
  - (b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.
- (9) The commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.
- (10) Upon conclusion of the hearing, the commission shall take the matter under advisement, shall render a decision as promptly as possible, and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the full name of every person charged with a rule violation; identification of such person, if licensed, by license classification and address; the rule number and pertinent parts of the rule alleged to have been violated; a separate statement of findings of fact; a separate statement of conclusions of law; a separate statement of reasons for the decisions; and penalties fixed by the commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the National Association of State Racing Commissioners.

Section 4. Appeal from Commission Order or Ruling. Any person or licensee aggrieved by any order or decision of the commission may appeal same to the Franklin Circuit Court. Such appeal must be made within ten (10) days after the entry of such order of decision of the commission by posting and filing in the office of the Franklin Circuit Court Clerk:

- (1) A bond to secure the costs of the action in a sum approved by the circuit clerk, said bond to be secured by corporate surety approved by the Department of Insurance.
- (2) An attested copy of the order or decision appealed from.
- (3) An attested copy of the transcript of evidence heard by the commission, the cost of such transcript of evidence heard by the commission, the cost of such transcript being borne by the appellant.

Appeals from a commission order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 5. Suspensions Pending Appeal. The commission may, for cause shown and provided that sufficient facts are presented by affidavit to warrant such action, lift a suspension until the final determination of the commission, unless:

(1) In any case where a licensee is alleged to have committed a flagrant violation of the prescribed rules and administrative regulations of racing which presents a clear and present danger to the immediate integrity of racing; or

(2) Wherein it is impossible for the commission to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours, then the commission or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial steward's determination of a violation.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the commission after giving notice of such application by mail or otherwise to all parties or their attorney. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the commission, the party applying for the continuance shall substantiate the reasons contained in such application.

(2) When application is made for continuance of a cause because of the illness of an applicant, licensee, witness, or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any commission hearing must be received by the commission at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the commission within the ninety-six (96) hour period will not be granted unless a satisfactory arrangement in writing is made with the commission for the payment of all expenses resulting from such continuance. However, the commission may waive payment of such expenses for extenuating circumstances.

(4) If the commission approves the application for continuance, the commission forthwith shall set a date for the continued hearing.

Section 7. Commission Hearing Officer. The commission may, by written order, designate counsel for the commission or any other qualified person designated by the commission as an officer to take testimony, conduct hearings, and submit findings to the commission.

Section 8. Disqualification of Commission Members and Hearing Officer. A commission member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any such member or hearing officer, the commission shall determine the matter as a part of the record and decision in the case. In the event of such withdrawal or disqualification, any other member of the commission, if there be such participating in the hearing, shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the commission, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision thereon. At least three (3) members of the commission must hear all the evidence or read the record before making a final decision. (Recodified from 812 KAR 1:105, 6-10-87.)